

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

904

KA 10-01523

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

HAROLD K. WOODRICH, DEFENDANT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR DEFENDANT-APPELLANT.

HAROLD K. WOODRICH, DEFENDANT-APPELLANT PRO SE.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (DAVID E. GANN OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Genesee County Court (Eric R. Adams, A.J.), entered May 20, 2009. The order denied the motion of defendant for additional DNA testing of certain evidence.

It is hereby ORDERED that the order so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from an order denying his postjudgment motion pursuant to CPL 440.30 (1-a) for additional DNA testing of certain items of evidence secured in connection with his conviction of, inter alia, rape in the first degree (Penal Law § 130.35 [1]). This Court previously affirmed the judgment convicting defendant of those crimes (*People v Woodrich*, 212 AD2d 998, lv denied 85 NY2d 945). County Court properly denied the motion "because defendant failed to establish that there was a reasonable probability that, had those items been tested [further] and had the results been admitted at trial, the verdict would have been more favorable to defendant" (*People v Sterling*, 37 AD3d 1158).

Entered: September 30, 2011

Patricia L. Morgan
Clerk of the Court